IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4490 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYABEN KANTIBHAI PURABIA

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 4490 of 2003

MR HRIDAY BUCH for Petitioner No. 1

MS.FALGUNI PATEL, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-3

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/04/2004

ORAL JUDGEMENT

The present petition is filed by a lady sweeper challenging the legality, validity and propriety of the order dated 17.02.2003 passed by respondent no.2, whereby the application of the petitioner under section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") for referring the dispute to the appropriate forum is rejected.

2. The facts of case are that the petitioner was working as sweeper for the last about 10 years at LD Engineering College Campus, Ambawadi, Ahmedabad as a daily wager. It is the case of the petitioner that thereafter the services of the petitioner were transferred to Judges' Bungalow Colony by respondent no.1; that since then the petitioner has been working as sweeper in Judges' Bungalow Colony as a daily wager; that initially, i.e. upto 1999-2000 i.e. for about 3-4 years signature of the petitioner was obtained on muster roll maintained by the authorities, but thereafter for the reasons best known to them, the petitioner was not allowed to sign the muster roll, but was continued in service and was paid remuneration also. The misfortune visited the petitioner when the petitioner along with another co-worker named, Prabhubhai Shivabhai made an application to the respondent authorities to make them permanent at the Judges' Bungalow Colony. The application was made on 25.09.1998, after that application was made the authorities stopped allowing the petitioner to sign the muster roll and on 27.06.2002 they finally asked the petitioner not to come on duty.

3. The petitioner being aggrieved of that made an application to the Assistant Labour Commissioner dated 08.10.2002 under section 2(k) of the Act for reinstatement with back wages. She submitted her written submissions in support of her claim on 31.01.2003. The respondent authorities filed their reply to the application of the petitioner on 15.01.2003. The Assistant Labour Commissioner, Ahmedabad by its order dated 17.02.2003 declined to refer the matter for adjudication.

4. Mr.Buch, the learned advocate for the petitioner submitted that the Assistant Labour Commissioner has undertaken the task of adjudication. He submitted that though it is not stated in so many words, the Assistant Labour Commissioner has recorded a finding to the effect that, "the case of the petitioner is not covered under the term, 'retrenchment' because the act of the

authorities fall within the provisions of section 2(oo)(bb) of the Act'. Mr.Buch emphatically submitted that it is not open for the Assistant Labour Commissioner to adjudicate the dispute. He ought to have restrained himself from adjudicating the matter and should have referred the matter to appropriate forum for its adjudication.

5. The learned Assistant Government Pleader, Ms.Falguni Patel produced on record a copy of letter dated 01.09.1998 addressed by the petitioner to the Deputy Executive Engineer requesting that she be given work of part time sweeper. She submitted that after this application was given the petitioner was given appointment for the first time, that too as a part time sweeper. It was in view of these facts that the learned Assistant Labour Commissioner was justified in refusing the reference.

It is to be noted that the case which is sought to be advanced by producing a copy of the application dated 01.09.1998 made by the petitioner to the Deputy Executive Engineer is not in line with the case which is advanced by the authorities in their reply dated 15.01.2003 before the Assistant Labour Commissioner. A copy of the reply dated 15.01.2003 is at Annexure 'D' to this petition, wherein the case advanced before the Assistant Labour Commissioner is that the "Judges' Colony (Bodakdev), for repairing and maintenance has come under the control of the Assistant Executive Engineer, Gujarat High Court (Roads & Buildings), Sub Division-2 with effect from 08.03.2002 from the Deputy Executive Engineer, Construction (R&B), Sub Division No.5 (Navrangpura Division) en block." It is the case of the authorities that when this en block transfer took place the list of the employees was sent by Navrangpura Division to the High Court Division. The name of the petitioner was not there in the said list. It is also stated in the said reply that, 'the petitioner has mentioned 27.06.2002 as a date of termination of her services'. In this regard, the report of the Section Officer/ Assistant Engineer dated 27.11.2002 is to be taken into consideration. Despite the fact that the petitioner has made an application, a copy of which is made available by the learned Assistant Government Pleader dated 01.09.1998, this fact is neither mentioned nor denied by the authority in its reply filed before the Assistant Labour Commissioner. From this it is clear that the authorities have not approached the problem bona fide.

6. Besides the aforesaid lacuna in the case of the authorities before the Assistant Labour Commissioner, the order of the Assistant Labour Commissioner deserves to be quashed and set aside also for the reason that it has undertaken the exercise of adjudicating upon the dispute rather than forwarding the matter by making a reference and leaving the work of adjudication to the appropriate forum. On this short ground the order dated 17.02.2003 is quashed and set aside.

7. Mr.Buch, the learned advocate appearing for the petitioner relied upon a judgement of this Court in Special Civil Application No.1804 of 1987. He submitted that in view of the two circulars which are referred to in the said judgement, one dated 04.02.1982 issued by the General Administration Department titled as, "Giving appointment to Safai Kamdars as Peon", another dated 26.12.1980 issued by the Fiance Department, Government of Gujarat titling it as "Part Time employees for conversion of pay into regular basis." The case of the present petitioner warrants consideration keeping the said judgement in mind. He submitted that in Special Civil Application No.1804 of 1987 the case of the petitioner was that he was appointed as Safai Kamdar in the year 1982. He hailed from a scheduled case, he was seeking regularisation and the authorities did not consider his case despite the aforesaid circulars. The Court directed the authorities to consider the case of the petitioner in light of the aforesaid two circulars sympathetically and communicate the decision to the petitioner by a Registered Post A.D. letter and not to terminate the services of the petitioner till the expiry of the period of four weeks after the decision is communicated.

8. Taking into consideration the submission of the learned advocate for the petitioner, it is deemed fit that the petitioner be directed to make a representation to the Secretary, Roads & Buildings Department, Government of Gujarat, Gandhinagar, with a copy of this petition, a copy of the judgement in Special Civil Application No.1804 of 1987 and the above two circulars, within 15 (fifteen) days from the receipt of the copy of this order. On receipt of such representation the Secretary shall consider the case of the petitioner sympathetically and decide the same within six weeks and communicate the decision by a Registered Post A.D. letter. In case the decision is adverse to the petitioner, it will be open for the petitioner to take recourse to the remedy available under law.

9. The petition is disposed of with the aforesaid

observations and directions. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)
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